

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-4468

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ROQUE ZUNIGA,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, District Judge. (CR-96-60)

Submitted: December 19, 1996

Decided: January 3, 1997

Before ERVIN and MOTZ, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Roque Zuniga, Appellant Pro Se. David T. Maguire, Assistant United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant appeals from the district court's order dismissing as untimely his appeal from his conviction and sentence imposed by a magistrate judge. We have reviewed the record and the district court's opinion and find no reversible error. An appeal from a judgment of conviction or sentence by a magistrate judge must be noted within ten days after entry of the judgment. Fed. R. Crim. P. 58(g)(2)(B). The time periods for filing notices of appeal are "mandatory and jurisdictional." United States v. Robinson, 361 U.S. 220, 229 (1960) (applying Fed. R. App. P. 4(b)).

The magistrate judge entered his order on April 30, 1996; Appellant's notice of appeal was filed on May 28, 1996. Because Appellant failed to note a timely appeal or obtain an extension of the appeal period, the district court was without jurisdiction to consider the merits of Appellant's appeal.¹ Accordingly, we deny Appellant's motion for transcripts at government expense and affirm the district court's dismissal of Appellant's appeal.² We dispense with oral argument because the facts and legal contentions are

¹ We note that Rule 58(g) does not provide for an additional thirty days within which to note an appeal upon a showing of excusable neglect. Compare Fed. R. Crim. P. 58(g)(2)(B) with Fed. R. App. P. 4(b). See United States v. Burgess, 602 F. Supp. 1329, 1331 (E.D. Va. 1985) (holding that Fed. R. App. P. not intended to govern appeals to district court from magistrate judge's judgments of conviction).

² Appellant's motion to expedite is now moot and is dismissed for that reason.

adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED